In my opinion the amendment operates to extend the time for instituting proceedings in respect of future causes of actions, i.e. causes of actions which arise after the date of the coming into force of the amendment, and to extend the time for instituting actions which had not been time-barred at that date, but does not operate to extend the time for instituting actions which had been time-barred at that date. This must be so because section 30(1)(b) of the Interpretation Act, 1967 provides that the repeal of a written law in whole or in part shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed law. Under section 3 of the Interpretation Act, 1967 "repeal" includes "replace", and therefore section 30(1)(b) of the Interpretation Act, 1967 applies to the amending provisions replacing the words "twelve months" with "thirty six months" in section 2(a) of the Public Authorities Protection Act, 1948. The amending provisions do not affect the right already acquired by the defendants to invoke immunity from the proceedings in this case after one year from the date of the accident. The amending provisions do not affect the plaintiff's right to sue which he had acquired and lost. Since this action had already been time-barred before the amendment came into force, it was not affected by the amendment and it continued to be time-barred at the time when the Writ was issued on May 15, 1975.

In my opinion to hold that the amendment applies to actions which had been time-barred at the time of its coming into force would create an anomalous situation and give rise to confusion. There might be claims which had been dismissed by the court before the introduction of the amendment, on the ground that they were brought after the expiry of one year after the causes of action had arisen, and three years might not have expired at the time of the institution of the proceedings. Is it suggested that after the introduction of the amendment the plaintiffs whose claims had been so dismissed, can ask the court to set aside the dismissal? On the other hand if such plaintiffs were not to be allowed to pursue their claims which had been so dismissed, there would be discrimination against such plaintiffs in favour of the plaintiffs who bring their actions after the introduction of the amendment and within three years from the date when their causes of action arose but whose claims had already been time-barred before the introduction of the amendment.

For my view I find support in the judgment in an Indian case, *K.K.K. Ramanathan Chettiar* v. *N.M. Kandappa Goundan.*[1] I quote hereunder the relevant passage in the judgment:

"We agree with Mr. N. Sivaramakrishna Aiyar, the learned advocate for the appellant, that the law of limitation applicable to a suit or proceeding is the law in force at the date of the institution of the suit or proceeding unless there is a distinct provision to the contrary. It is also well settled that the law of limitation being procedural law, its provisions operate retrospectively in the sense that they apply to causes of action which arose before their enactment. But on an examination of the authorities on the point, we find it equally well established that if a right to sue had become barred by the provisions of the Limitation Act then in force on the date of the coming into force of a later enactment, then such a barred right is not revived by the application of the new enactment. Section 2, Limitation Act, 1877, expressly provided as follows:

'A reference to the Limitation Act, 1871, shall be read as if made to this Act and nothing herein contained shall be deemed to affect any title acquired, or to revive any right to sue barred under that Act or under any enactment thereby repealed.'

No doubt a similar provision is not found in the Limitation Act, 1908, but this is probably because of section 6(a) General Clauses Act, 1897, which embodies a similar provision. Apart from decided cases, it appears to follow on principle that the right of action barred by limitation at the time when a new Act or amendment comes into force cannot be revived by the subsequent change in the law brought about by the new Act or amendment. The preponderance of decided cases also leads us to the same conclusion. There is a long catena of Privy Council rulings in which we find the same principle enunciated."

I am mindful of the judgment of Murray-Aynsley C.J. in the Singapore case of *N.M. Yousoff* v. *Teo Kai Tee & Anor.*[2] It seems that in that case an amendment similar to the one in the instant case was taken as having effect to extend the limitation period which had expired before the amendment. However, the following passage appears in the judgment:

"In view of this I think the plaintiff is entitled to succeed unless the Interpretation Ordinance (No. 4 of 1951) affects the situation. Section 14 was relied on by counsel for the second defendant. It is possible that the words of this section cover the situation of the second defendant after February 9, 1953, but in order to bring the second into operation there must be a repeal."

The relevant provisions of section 14 of the Interpretation Ordinance, 1951 of Singapore were almost identical with the relevant provisions of section 30(1)(b) of our Interpretation Act, 1967, on which I have earlier relied. But it should be noted that there was no provision in the Singapore Ordinance defining "repeal" to include "replace". In my opinion the ruling in the Singapore case would have been different if the Singapore Ordinance had contained such definition.

I uphold the learned Federal Counsel's objection and dismiss this suit. I make no order as to costs.

Claim dismissed.

Solicitors: *Murphy & Dunbar.*

LIM CHO HOCK v. SPEAKER, PERAK STATE LEGISLATIVE ASSEMBLY

[O.C.J. (Abdoolcader J.) January 22, 1979]
[Ipoh — Originating Summons No. 447 of 1978]

Constitutional Law — Speaker — Member of Legislative Assembly — Failure to take oath as member — Whether seat vacated — Legislative Assembly the final arbiter — Constitution of Perak, arts. XLVII (1) and (4), XXXIII and XXXIV — Federal Constitution, art. 72(1).

Practice and Procedure — Originating summons — Application for declaration that seat of member of Legislative Assembly vacated — No question of construction involved — No locus standi — Proceedings incompetent — R.S.C. 1957, O.54A r. 1A.

In this case the applicant applied by Originating Summons for the determination of the question whether the seat of a member of the Legislative Assembly, who was also the Speaker, had been vacated as he had not taken the oath required of a member. The respondent applied to set aside the Originating Summons on the grounds *inter alia* (1) that the application was not maintainable in law and procedure and (2) that the court had no jurisdiction to entertain the application as the reliefs sought were exclusively within the jurisdiction of the Legislative Assembly of the State of Perak.

Held: (1) the proceedings by Originating Summons were incompetent as they do not come within the requirements of Order 54A rule 1A of the Rules of the Supreme Court;

(2) the Legislative Assembly is the final arbiter in any question arising as to whether a member of the Legislative Assembly has become disqualified for membership. The matters raised were for the Legislative Assembly to decide and within its exclusive jurisdiction and not for the courts to determine.

Cases referred to:-

(1) *Sungei Wangi Estate* v. *Uni* [1975] 1 M.L.J. 136, 140.

(2) *Rigden* v. *Whitstable Urban District Council* [1959] Ch. 422.

(3) *Bradlaugh* v. *Gossett* (1884) 12 Q.B.D. 271.

ORIGINATING SUMMONS.

Ngan Siong Hing for the applicant.

Shaik Daud bin Haji Ismail, Legal Adviser, Perak (*Lim Beng Choon,* Senior Federal Counsel with him) for the respondent.

Abdoolcader J. (delivering oral judgment):

Preliminary

By an originating summons taken out on December 15, 1978, the applicant who is the member for Kepayang in the Perak State Legislative Assembly seeks the determination of the court on 7 questions, as he puts it, namely:

"(1) That the Speaker of the Perak State Assembly who is the Honourable Member for Belanja has not taken his oath as a State Assemblyman as required under the provision (*sic*) of Article 47(1) of the Constitution of Perak read together with Order 1(c) of the Standing Orders of the Perak State Legislative Assembly.

(2) That the Speaker who is also the Honourable Member for Belanja has, by reason of his not having taken the oath as required under Article 47(1) of the Constitution of Perak and Order 1(c) of the Standing Orders of the Perak State Legislative meeting (*sic*) rendered his seat vacant in view of Article 47(4) of the Constitution of Perak.

(3) That Pursuant (*sic*) to Article 47(4) of the Constitution of Perak the Speaker cannot now legally hold the office of Speaker as he has been constitutionally incapacitated for non-compliance with the provisions of the Constitution of Perak and the provisions of the Standing Orders of the Perak State Legislative Assembly.

(4) That, by virtue of Article 36(A)(1) (*sic*) of the Constitution of Perak, the Perak State Legislative Assembly cannot now transact any business until the election of a new Speaker.

(5) That all business transacted since the summoning of the State Legislative Assembly by His Highness the Sultan of Perak on the 6th day of December, 1978 be declared null and void and of no effect.

(6) That there now exists a vacancy for the post of Mr. Speaker in the State Legislative Assembly.

(7) That the Seat (*sic*) of Belanja be now declared vacant."

and there is then the prayer for further or other relief.

He then applied by summons-in-chambers on December 27, 1978, for an order to amend the originating summons by deleting 'questions' (3) to (7) and the prayer for further or other relief which I granted earlier this morning in Chambers. As I indicated in the course of submissions earlier this morning, it would appear that the primary purpose of the originating summons is in effect to declare the proceedings of the Assembly at its second sitting commencing on December 6, 1978, invalid, and this is abundantly clear from the form of relief initially sought, paragraph 20 of the applicant's affidavit in support of his summons and the terms and contents of the certificate of urgency filed therewith.

It is also of some significance in this connection that the 1st respondent is named as the Speaker of the Assembly and not by name as the member for Belanja, as his designation as Speaker would be relevant if the validity of the Assembly's proceedings and his office as Speaker were in issue which they are not as a result of the amendment, and the two remaining matters raised for determination only pertain to his standing as a member of the Assembly. Again the joinder of the Clerk or Secretary to the Assembly, whichever is his designation, as 2nd respondent, substantiates the view that the crunch of the applicant's complaint would appear to be directed to the question of the validity of the proceedings of the Assembly at its second sitting and the 1st respondent holding the office of Speaker.

I think I can fairly conclude in the circumstances that the applicant applied to amend the originating summons only after realising, somewhat late in the day, the effect of the provisions of Article 72(1) of the Federal Constitution to the effect that the validity of any proceedings in the Legislative Assembly of any State shall not be questioned in any court. Whatever it is, I now have before me the originating summons in a somewhat emasculated form with only the remaining two matters raised therein for determination.

The respondents however by a summons-in-chambers filed on December 28, 1978, now move to set aside the originating summons on the grounds, and I quote:

"(1) that this Honourable Court has no jurisdiction to entertain the application made by way of the aforesaid Originating Summons in that the reliefs sought are exclusively within the jurisdiction of the Legislative Assembly of the State of Perak;

(2) that the said application discloses no reasonable cause of action and/or is misconceived frivolous and vexatious;

(3) that in the alternative the said application is not maintainable both in law and procedure."

I will accordingly have to deal with and decide this application in the first instance.

Procedure — Order 54A rule 1A

First, on the question of procedure, the originating summons in effect seeks declarations and must necessarily have been made under the provisions of Order 54A rule 1A of the Rules of the High Court, 1957, and this Mr. Ngan Siong Hing for the applicant concedes, and as I said in my judgment in *Sungei Wangi Estate* v. *Uni*[1] (at p. 140), a declaration can only be made by originating summons under the provisions of Order 54A and Order 55 rule 3 (which does not apply) and that otherwise proceedings for a declaration must be brought by writ.

Order 54A rule 1A prescribes:

"Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of any written law, may apply by originating summons for the determination of such question of construction, and for a declaration as to the right claimed."

Two matters which are prerequisites for its application arise for consideration in this case with regard

to this rule: whether a question of construction of a written law on which the applicant's asserted legal or equitable right depends is involved, and the *locus standi* of the applicant as to whether he is entitled to or can claim any such right in the matters sought for determination.

The form of relief sought in the originating summons clearly does not presuppose or involve any question of construction of the First Part of the Laws of the Constitution of Perak ('the State Constitution') or the Standing Orders of the Assembly in asking for the determination of the two matters raised. The two matters for determination in the originating summons are not questions raising points of construction of the statutory provisions in issue or for that matter questions at all or posed as such but conclusions presented for endorsement by the court by way of declaration. It is manifestly apparent that no question of construction of the State Constitution or the Assembly's Standing Orders arises or is involved in these proceedings but only their application to the facts of the matter. The applicant's complaint is a straightforward one to the effect that the 1st respondent has failed to take the oath as a member of the Assembly in violation of the provisions of Article XLVII(1) of the State Constitution and Standing Order 1(c) of the Assembly's Standing Orders and his seat as the member for Belanja is therefore now vacant. Mr. Ngan in the course of his submission in answer to a specific question I put to him had perforce to concede that the provisions of Article XLVII(1) and (4) are clear cut, as he put it.

To say that the assertion of a right under a written instrument or written law must of necessity connote or involve a question of construction for the purposes of rules 1 and 1A of Order 54A is a total misconception, stretching the provisions of these rules far beyond their intended purpose and teleporting them into the twilight zone, for then for example any question of a breach of an agreement of sale could be freely ventilated on that basis under Order 54A by way of originating summons for the purposes of expedition in obtaining specific performance and other relief appropriate only to proceedings by writ.

On the question of the applicant's standing to sue under Order 54A rule 1A, the provision that he must claim or assert a 'legal or equitable right' seems to imply that under that rule he must satisfy more rigorous requirements as to *locus standi* than a plaintiff in an action under Order 25 rule 5 who need only establish that his legal interests are peculiarly affected. In *Rigden* v. *Whitstable Urban District Council,*[2] it was held that the English Order 54A (*in pari materia* with ours but since repealed in 1962) did not allow to declare invalid an administrative notice. The plaintiff in that case was served by the defendant local authority with an enforcement notice under section 23 of the Town and Country Planning Act, 1947, requiring him to discontinue the use of his land as caravan site. He thereupon took out an originating summons claiming a declaration that the enforcement notice did not comply with the provisions of the said section and was therefore null and void. The court dismissed the application on the ground that it did not fall within the ambit of either rule 1 or rule 1A in that he was not a person interested under a written instrument nor was he claiming any legal or equitable right which depended on the construction of the Act within the meaning of these two rules.

I cannot see what legal or equitable right the applicant can claim in regard to the vacation of the seat of the member for Belanja, which is what the originating summons as it now stands seeks to declare, which depends on the construction of the relevant statutory provisions applicable. The originating summons as it now stands (after deletion by amendment of the third and sixth 'questions' in the originating summons in particular), quite apart from there being no question of construction of any written law involved, does not raise for determination the question whether the office of Speaker is vacant, but only a contention that the seat of the member for Belanja is, and it is not the function of the court to go beyond its terms of reference, so to speak, in an application under Order 54A rule 1A, and I would also draw attention to the fact that the applicant in his supporting affidavit and the exhibits thereto discloses that the 1st respondent did take an oath as Speaker under the Assembly's Standing Orders in the same form as that prescribed for members of the Assembly by Article XLVII(1) of the State Constitution.

Under Order 54A rule 1A what is to be sought is the determination of a question of construction of a written law and a declaration as to the legal or equitable right claimed by the applicant which depends on such question of construction and not a declaration generally and at large. Even if there were a question of construction of any written law involved, a determination thereon would not entitle the applicant to claim any right in respect of the issue raised. Again Mr. Ngan in the course of his address had to concede on this point when I explicitly put it to him for a reply. He might perhaps be in a position to claim such right if the originating summons stood in its original form and questioned the validity of the Assembly's proceedings and the 1st respondent's position as Speaker, but by the amendment these matters are no longer in issue. But this again would be dependent on there being a question of construction involved. I must immediately however add a caveat to stress that the lack of such right is only pertinent for the purposes of an application under Order 54A rule 1A and does not wholly deprive him of any resort to a declaration, as it would have been open to him to proceed by way of writ under Order 25 rule 5, as indeed the plaintiff in *Rigden* v. *Whitstable Urban District Council*[2] could certainly have done.

I should perhaps also refer to the provisions of rule 4 of Order 54A which prescribe that the court or judge shall not be bound to determine any such question of construction if in their or his opinion it ought not to be determined on originating summons. It is clear therefore that the decision of the court on the question of construction in any such application is a matter of discretion, and the court can refuse to so determine on originating summons even if the prerequisites of the relevant rule in Order 54A are present.

I accordingly hold that these proceedings by originating summons are incompetent as they do not come within the requirements of Order 54A rule 1A.

Jurisdiction

Second, on the question of jurisdiction, Article XLVII(1) and (4) of the State Constitution reads:

"XLVII. (1) Every member of the Legislative Assembly shall before taking his seat take and subscribe before the person presiding in the Assembly the following Oath:

'I, ..., having been elected as a member of the Legislative Assembly of the State of Perak, do solemnly swear (or affirm) that I will faithfully discharge my duties as such to the best of my ability, that I will bear true faith and allegiance to the State of Perak and to the Federation of Malaya, and that I will preserve, protect and defend the Constitution of the State of Perak';

and, if a subject of His Highness, until he shall also have taken and subscribed in similar fashion the following Oath of Allegiance:

'I, ..., do swear that I will be faithful and bear true allegiance to HIS HIGHNESS, , and His Successors, according to law.'

....

....

(4) If a member has not taken his seat within three months from the date on which the Legislative Assembly first sits after his election or such further time as the Assembly may allow, his seat shall become vacant."

Article XXXIII of the State Constitution provides:

"XXXIII. If any question arises whether a member of the Legislative Assembly has become disqualified for membership, the decision of the Assembly shall be taken and shall be final."

It is clear from the provisions of Article XXXIII that the Assembly is the final arbiter in any question arising as to whether a member of the Assembly has become disqualified for membership. Article XXXIV (1) provides that if a member of the Assembly becomes disqualified for membership of the Assembly or dies, his seat shall become vacant. The effect of Article XLVII(4) therefore is that if a member has not taken his seat within three months from the date of the first sitting of the Assembly after his election or such further time as the Assembly may allow, his seat shall become vacant as he is then disqualified for membership. Under Article XXXIII when a question as to disqualification of a member arises, it is the Assembly which decides, and finally, on the matter, and that that is so is reinforced by the provision in Article XLVII(4) for the extension of the stipulated period of three months by "such further time as the Assembly may allow".

I have already referred to the provisions of Article 72(1) of the Federal Constitution which might perhaps also affect the position as well, as the originating summons in raising the matter of the 1st respondent not having taken the oath as a member of the Assembly although he had in fact taken the oath as Speaker after his election as such under Standing Order 1(c) of the Assembly's Standing Orders might appear in effect to question the validity of the internal proceedings of the Assembly.

In the light of these constitutional provisions, it is clear that the two matters raised in these proceedings are for the Assembly to decide and within its exclusive jurisdiction, and not for the courts to determine.

Under the *lex et consuetudo parliamenti*, the Assembly has control over its proceedings, procedure and members and may decide questions as to their qualifications and disqualification. The provisions in the Federal and State Constitutions I have discussed crystallise and encapsulate this important principle of non-justiciability of its intra-mural activities in the courts which may perhaps be appropriately termed the Bradlaugh principle, highlighted in *Bradlaugh* v. *Gossett*[3] as a result of the House of Commons in England preventing an elected atheist from exercising his statutory right of making the member's oath by affirmation. The oath being a precondition to the right to participate in proceedings of the House, the plaintiff was thus prevented from taking his seat. The court ruled that the matter was not justiciable before it — only Parliament was competent to regulate and for that purpose judge the validity of its intra-mural activities. I should perhaps add as a corollary to that case that the plaintiff's electorate disagreed with Parliament — he was elected five times in as many years, and it was only on the last occasion that he was allowed to take his seat.

Conclusion

In the result, it follows that the respondents' application succeeds. The applicant's main summons which is misconceived fails accordingly *in limine* and is dismissed with costs.

Order accordingly.

Solicitors: *Ngan Siong Hing & Co.*

JAYARAMAN & ORS. v. PUBLIC PROSECUTOR

[R.Cr.J. (Harun J.) February 22, 1979]

[Kuala Lumpur — Criminal Revision No. 1 of 1979]

Criminal Law and Procedure — Charges — Four charges against eight accused persons — Whether could be tried jointly — Same transaction — Discretion of the Court — Courts of Judicature Act, 1964, s. 35 — Criminal Procedure Code (F.M.S. Cap. 6), ss. 163, 165, 166 and 170.

In this case the eight accused were jointly charged with four charges of culpable homicide not amounting to murder. At the commencement of the hearing before the Sessions Court the learned Deputy Public Prosecutor applied for the trial to proceed on the first three charges with the fourth charge being stayed. The defence objected to such a course on the grounds that the accused will be in double jeopardy in that there would be two separate trials in respect of offences alleged to have been committed which arise out of the same transaction. The learned President of the Sessions Court ordered the trial to proceed on the first three charges and stayed the hearing of the fourth charge. At the request of the defence the learned President adjourned the hearing to enable the High Court to give the necessary directions under section 35 of the Courts of Judicature Act, 1964.

Held: (1) the four alleged offences in this case were committed in a series of acts so connected as to form one transaction and the case falls within the exception contained in section 170 of the Criminal Procedure Code and the cases could be tried together;

(2) the discretionary power to order whether the charges should be heard jointly or separately is that of the court and not the prosecution. In this case the Sessions Court should be directed to proceed with the trial on all four charges jointly.